

1 As Plaintiff's burden under "product line" successor liability is to present proof of all three
2 factors (Hall, 103 Wn.2d at 262; Martin, 102 Wn.2d at 614), his failure regarding two of them is
3 sufficient grounds to deny this portion of his summary judgment motion.¹

4 **Conclusion**

5 In the absence of any persuasive argument on the impact of the language of the ChemRex-
6 Rexnord transactional documents, the Court cannot find as a matter of law that BASF CC, as
7 purchaser of ChemRex, has expressly assumed liability for any injury arising out of the use of a Z-
8 Brick product. Nor has Plaintiff carried his burden of establishing the three elements required for
9 proof of assumed liability under a "product line" theory. His motion for partial summary judgment
10 against BASF CC on the issue of successor liability is therefore DENIED.

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12 The clerk is directed to provide copies of this order to all counsel of record.

13 Dated: November 4, 2008

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16 Marsha J. Pechman
17 U.S. District Judge
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20 ¹ The Court notes in passing that BASF CC also attacks Plaintiff's motion on the grounds that there is no
21 proof that the product at issue actually is Z-Brick. The Court has previously assumed, for the purposes of earlier
22 summary judgment motions, that the product is Z-Brick, pending proof of that fact by way of summary judgment,
23 request for admission or at trial. Any ruling in Plaintiff's favor against a Z-Brick manufacturer (past or present) would
24 be subject to proof that the material in question is in fact Z-Brick. The fact that such proof has yet to be produced does
25 not constitute grounds for denying Plaintiff's motion, however.